

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:23-cv-07695-FLA-BFM **Date:** February 21, 2024

Title: Jorge Alejandro Rojas v. Marketizo Media, et al.

Present: The Honorable Brianna Fuller Mircheff, United States Magistrate Judge

Christianna Howard
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Plaintiff:
N/A

Attorneys Present for Defendants:
N/A

**Proceedings: (In Chambers) Order Re: Ex Parte Application for
Leave to Issue Early Subpoenas (ECF 21)**

On September 13, 2023, Plaintiff filed this action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. Plaintiff contends that Defendants violated the TCPA by making telephone calls to Plaintiff without his consent despite his being on the National Do Not Call Registry. Plaintiff, a pro se litigant, paid the filing fee. (ECF 7.) On October 17, 2023, Plaintiff filed a First Amended Complaint (“FAC” (ECF 13)) in which he informed the Court that he is terminating and dismissing with prejudice the original Defendants¹ and adding two new Defendants, Marketizo Media and Matias Oscar, whom he contends “are liable for the conduct alleged in the original Complaint, and th[e] Amended Complaint.” (FAC at 1 n.1.)

On February 18, 2024, Plaintiff filed an Ex Parte Application for leave to issue two early Rule 45 subpoenas to aid in service of process on the new

¹ Plaintiff states that the original Defendants are being voluntarily dismissed with prejudice following settlement with them. As of the date of this Order, no notice of settlement has been filed with the Court.

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Defendants. (App. at 1.) He explains that the prior Defendants provided him with contact information for Marketizo Media and Oscar, but Plaintiff's numerous attempts at service have been unsuccessful. (App. at 2-3.) Plaintiff seeks leave of Court to issue two Rule 45 subpoenas: (1) directed at Domains By Proxy, LLC, seeking contact information for the website Marketizomedia.com, including identifying the registrant, administrator, technical, customer, and billing contact information including name, company name, telephone numbers, addresses, and email for Marketizomedia.com from September 1, 2022, to the present (App. Ex. 1); and (2) directed at LinkedIn Corporation seeking contact information (emails, addresses, telephone numbers) for Matias Oscar's LinkedIn account, available as of February 18, 2024, at <https://www.linkedin.com/in/matias-oscar-996b22229> (App. Ex. 2).

Rule 26(d) of the Federal Rules of Civil Procedure ordinarily prohibits a party from seeking discovery from another litigant or a third party until after service of process and a joint Rule 26(f) conference. But on a showing of "good cause" a court may allow early discovery. *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002).

"Good cause exists 'where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.'" *In re Countrywide Fin. Corp. Derivative Litig.*, 542 F. Supp. 2d 1160, 1179 (C.D. Cal. 2008) (quoting *Semitool, Inc.*, 208 F.R.D. at 276). In considering whether good cause exists, courts may consider such factors as: "(1) the concreteness of plaintiff's showing of a prima facie claim of actionable harm; (2) the specificity of the discovery requests; (3) the absence of alternative means to obtain the subpoenaed information; (4) the need for subpoenaed information to advance the claims; and (5) defendant's expectation of privacy."

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Strike 3 Holdings, LLC v. Doe, 2022 WL 657932, at *1 (E.D. Cal. Mar. 4, 2022) (citing *Arista Records LLC v. Doe 3*, 604 F.3d 110, 119 (2d Cir. 2010)).

Upon review, the Court finds that good cause exists for the issuance of the subpoenas directed at Domains By Proxy, LLC and LinkedIn Corporation, as attached at Exhibits 1 and 2 of the Application (ECF 21), respectively. Plaintiff's Application (ECF 21) is **granted** and the Court clerk shall issue the subpoenas. Plaintiff shall notify any respondent to the subpoena(s) that customer notification prior to production is required. Plaintiff shall also provide any respondent to the subpoena(s) with a copy of this Order.

IT IS SO ORDERED.

cc: Jorge Alejandro Rojas, pro se

Initials of Preparer: ch